

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER  
AND FORT PECK DAM - BASIN (40E)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Natali Murnion; Leo Murnion; Benedict H.  
Murnion; ~~Virginia L. Murnion~~

OBJECTORS: USA (Dept. of Interior Bureau of Land  
Mgmt.); USA (Dept of Interior Fish &  
Wildlife Service)

**CASE 40E-0212-R-2022**

40E 186513-00

40E 186516-00

40E 186519-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

### FINDINGS OF FACT

1. The ownership of claims 40E 186513-00, 40E 186516-00, and 40E 186519-00 has recently been updated; the caption and service list reflect the update.

2. Claims 40E 186513-00, 40E 186516-00, and 40E 186519-00 were decreed with DNRC issue remarks:

#### **Claim 40E 186513-00:**

THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1 AND 4 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 2 AND 3 COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

THIS CLAIM APPEARS TO BE CLAIMING THREE SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

THE CLAIMED SOURCE FOR POINT OF DIVERSION NO. 2 AND 3 MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM LONE TREE CREEK AND AN UNNAMED TRIBUTARY OF LONE TREE CREEK.

#### **Claim 40E 186516-00:**

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

POINT OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 13 TIMES THE CAPACITY OF THE RESERVOIR.

#### **Claim 40E 186519-00:**

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

SOURCE NAME, POINT OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 13 TIMES THE CAPACITY OF THE RESERVOIR.

3. The United States of America (Bureau of Land Management) objected to claims 40E 186513-00, 40E 186516-00, and 40E 186519-00. The United States of America (Fish & Wildlife Service) objected to claim 40E 186519-00.

4. On October 21, 2022, Claimants Benedict H. Murnion, Leo Murnion, and Natali Murnion, and the Objectors filed a Stipulation resolving the Objections to claims 40E 186513-00, 40E 186516-00, and 40E 186519-00; a copy of the Stipulation is attached.

5. Several issues were outstanding and an Order Setting Filing Deadline for the Parties to File a Map, Order Setting Filing Deadline for Virginia Murnion, and Order Setting Deadlines Pursuant to Section 85-2-248(5), MCA was issued. The Order set the following deadlines:

- A December 16, 2022 deadline for the parties to file maps showing the legal land description changes proposed in the October 21, 2022 Stipulation.
- A deadline for a representative of Virginia L. Murnion to indicate agreement or disagreement with the Stipulation. Failure to file would be deemed agreement with the Stipulation.
- Deadlines for Claimants Benedict H. Murnion, Leo Murnion, Natali Murnion, and Virginia L. Murnion to meet with the DNRC to address unresolved issue remarks decreed on claims 40E 186513-00.

6. On December 2, 2022, the Bureau of Land Management filed maps showing the legal land description changes proposed in the October 21, 2022 Stipulation. A copy of the December 2, 2022 filing is attached.

7. Pursuant to the Stipulation, the place of use for claims 40E 186513-00, 40E 186516-00, and 40E 186519-00 should be:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	67.00		NE	30	22N	41E	GARFIELD
2	119.00		NW	29	22N	41E	GARFIELD
3	45.00		W2NE	29	22N	41E	GARFIELD
4	27.00		NESW	29	22N	41E	GARFIELD
5	28.00		NWSE	29	22N	41E	GARFIELD
6	51.00			28	22N	41E	GARFIELD
Total:	337.00						

7. Nothing was filed on behalf of Virginia L. Murnion in response to the October 28, 2022 Order. Virginia L. Murnion was recently removed as a co-owner of the claims.

8. Claimants Benedict H. Murnion, Leo Murnion, Natali Murnion, and Virginia L. Murnion (Claimants) were ordered to meet with the DNRC to address unresolved issue remarks decreed on claim 40E 186513-00:

THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1 AND 4 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 2 AND 3 COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

THIS CLAIM APPEARS TO BE CLAIMING THREE SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

THE CLAIMED SOURCE FOR POINT OF DIVERSION NO. 2 AND 3 MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM LONE TREE CREEK AND AN UNNAMED TRIBUTARY OF LONE TREE CREEK.

9. On December 9, 2022, DNRC Water Resource Specialist Pam Weinmeister filed a Memorandum stating the Claimants failed to contact her. Ms. Weinmeister reported that she reviewed information in the claim files, the Water Right Claim Examination Rules, Water Right Claim Examination Manual, Water Resource Survey photo AZO-6JJ-282 dated 8/1/1968, Water Resources Survey photo AZO-6JJ-239 dated 8/1/1968, USDA Aerial photo 278-40 dated 10/6/1978, and topographical maps of Gilbert Creek & Ash Creek West to prepare her Memorandum. Ms. Weinmeister indicated that her sources show that there has never been a dike in Section 28, Township 22 North and she recommended the point of diversion in Section 28 be removed from claim 39E 186513-00. Ms. Weinmeister also recommended the source issue remark be removed from claim 39E 186513-00.

Ms. Weinmeister stated that without Claimant contact, she could not resolve the other issue remarks.

Without further refining the points of diversion, as requested by the DNRC, enforcement issues are possible in the future and that is a risk the Claimants may assume. The source for points of diversion nos. 2 and 3 is currently listed as an “Unnamed Tributary of Lone Tree Creek.”

10. An Order Setting Filing Deadline was issued to determine if the Claimants agreed or disagreed that point of diversion no. 4 should be removed from claim 40E 186513-00, and to provide a final opportunity for the Claimants to refine the points of diversions and clarify the source for points of diversion nos. 2 and 3. The Order required Claimants Benedict H. Murnion, Leo Murnion, and Natali Murnion to file statements agreeing or disagreeing that point of diversion no. 4 be removed from claim 40E 186513-00 by the deadline or this Water Master would conclude the Claimants agree that point of diversion no. 4 should be removed from claim 40E 186513-00. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

#### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The volume guideline applicable to direct flow water-spreading systems that do not utilize stored water is the number of acre-feet per acre based upon the climatic area for the claimed place of use. See Rule 15(b),(c),(e), W.R.C.E.R. The claimed place of use for claims 40E 186516-00 and 40E 186519-00 is in climatic area I. The guideline for climatic area I is 2.30 acre-feet per acre. Nevertheless, the guideline is only a

guideline and not a limitation on a water right and the guideline does not overcome the prima facie statement of claim, the volume issue remarks can be removed.

4. The notice-type issue remarks decreed on claims 40E 186516-00 and 40E 186519-00 have served their purpose. As the Objections to the claims in the Case have been resolved, no further proceedings are required.

#### RECOMMENDATIONS

1. Claims 40E 186513-00, 40E 186516-00, and 40E 186519-00 should be modified as shown in the Findings of Fact.

2. The issue remarks should be removed from the claims in this Case.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service Via Electronic Mail:**

Eve W. McDonald, Trial Attorney  
Natural Resources Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
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Denver, CO 80202  
(303) 844-1381  
Evelyn.mcdonald@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

Mark.Widerschein@USDOJ.GOV  
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202-532-5803  
Mark.Widerschein@Usdoj.Gov  
Montanabasins.ENRD@USDOJ.GOV

**Service via USPS Mail:**

Natali Murnion  
Ben H. Murnion  
Leo Murnion  
PO Box 307  
Jordan, MT 59337

~~Benedict H. Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9609~~

**Last Order:**

Virginia L. Murnion  
PO Box 13  
Jordan, MT 59337-0013

**Service List Updated on January 26, 2023**

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM**  
**BASIN 40E**

**Water Right Number:** 40E 186513-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BEN H MURNION  
PO BOX 307  
JORDAN, MT 59337 0307  
  
LEO MURNION  
PO BOX 307  
JORDAN, MT 59337  
  
NATALI MURNION  
PO BOX 307  
JORDAN, MT 59337 0307

**Priority Date:** MARCH 19, 1958  
**Type of Historical Right:** FILED  
**Purpose (use):** IRRIGATION  
**Irrigation Type:** WATER SPREADING  
**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.  
**Volume:** 960.00 AC-FT  
**Climatic Area:** 1 - HIGH  
**\*Maximum Acres:** 337.00  
**Source Name:** LONE TREE CREEK  
**Source Type:** SURFACE WATER  
**Source Name:** UNNAMED TRIBUTARY OF LONE TREE CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NE	30	22N	41E	GARFIELD
<b>Source Name:</b> LONE TREE CREEK						
<b>Period of Diversion:</b> MARCH 15 TO NOVEMBER 15						
<b>Diversion Means:</b> DIKE						
2		N2	29	22N	41E	GARFIELD
<b>Source Name:</b> UNNAMED TRIBUTARY OF LONE TREE CREEK						
<b>Period of Diversion:</b> MARCH 15 TO NOVEMBER 15						
<b>Diversion Means:</b> DIKE						
3		N2S2	29	22N	41E	GARFIELD
<b>Source Name:</b> UNNAMED TRIBUTARY OF LONE TREE CREEK						

**Period of Diversion:** MARCH 15 TO NOVEMBER 15  
**Diversion Means:** DIKE  
**Period of Use:** MARCH 15 TO NOVEMBER 15

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	67.00		NE	30	22N	41E	GARFIELD
2	119.00		NW	29	22N	41E	GARFIELD
3	45.00		W2NE	29	22N	41E	GARFIELD
4	27.00		NESW	29	22N	41E	GARFIELD
5	28.00		NWSE	29	22N	41E	GARFIELD
6	51.00			28	22N	41E	GARFIELD
<b>Total:</b>	<u>337.00</u>						

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

186513-00

186516-00

186519-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM**  
**BASIN 40E**

**Water Right Number:** 40E 186516-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BEN H MURNION  
PO BOX 307  
JORDAN, MT 59337 0307

LEO MURNION  
PO BOX 307  
JORDAN, MT 59337

NATALI MURNION  
PO BOX 307  
JORDAN, MT 59337 0307

**Priority Date:** MARCH 19, 1958

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

**Volume:** 960.00 AC-FT

**Climatic Area:** 1 - HIGH

**\*Maximum Acres:** 337.00

**Source Name:** UNNAMED TRIBUTARY OF LONE TREE CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSENE	30	22N	41E	GARFIELD

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSENE	30	22N	41E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 14.00 FEET

**Depth:** 11.00 FEET

**Surface Area:** 16.77 ACRES

**Capacity:** 73.79 ACRE-FEET

**Period of Use:** JANUARY 1 TO DECEMBER 31

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	67.00		NE	30	22N	41E	GARFIELD
2	119.00		NW	29	22N	41E	GARFIELD
3	45.00		W2NE	29	22N	41E	GARFIELD
4	27.00		NESW	29	22N	41E	GARFIELD
5	28.00		NWSE	29	22N	41E	GARFIELD
6	51.00			28	22N	41E	GARFIELD
<b>Total:</b>		337.00					

---

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

186513-00

186516-00

186519-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM**  
**BASIN 40E**

**Water Right Number:** 40E 186519-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BEN H MURNION  
PO BOX 307  
JORDAN, MT 59337 0307  
  
LEO MURNION  
PO BOX 307  
JORDAN, MT 59337  
  
NATALI MURNION  
PO BOX 307  
JORDAN, MT 59337 0307

**Priority Date:** MARCH 19, 1958  
**Type of Historical Right:** FILED  
**Purpose (use):** IRRIGATION  
**Irrigation Type:** WATER SPREADING  
**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.  
**Volume:** 960.00 AC-FT  
**Climatic Area:** 1 - HIGH  
**\*Maximum Acres:** 337.00  
**Source Name:** LONE TREE CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE	30	22N	41E	GARFIELD

**Period of Diversion:** MARCH 15 TO NOVEMBER 15  
**Diversion Means:** DAM  
**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENE	30	22N	41E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 1  
**Dam Height:** 14.00 FEET  
**Depth:** 11.00 FEET  
**Surface Area:** 16.77 ACRES  
**Capacity:** 73.79 ACRE-FEET  
**Period of Use:** MARCH 15 TO NOVEMBER 15

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	67.00		NE	30	22N	41E	GARFIELD
2	119.00		NW	29	22N	41E	GARFIELD
3	45.00		W2NE	29	22N	41E	GARFIELD
4	27.00		NESW	29	22N	41E	GARFIELD
5	28.00		NWSE	29	22N	41E	GARFIELD
6	51.00			28	22N	41E	GARFIELD
<b>Total:</b>		337.00					

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

186513-00

186516-00

186519-00

ELECTRONICALLY FILED

TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

40E-0212-R-2022

JESSE A. LASLOVICH, United States Attorney  
District of Montana

December 2, 2022

MARK J. WIDERSCHIEIN, Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
P.O. Box 7611  
Washington, D.C. 20044-7611  
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Montana Water Court

ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management, Fish and Wildlife Service

**IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER  
AND FORT PECK DAM – BASIN 40E  
PRELIMINARY DECREE**

\*\*\*\*\*

CLAIMANT: Natali Murnion; Leo Murnion; Benedict H.  
Murnion; Virginia L. Murnion

**CASE 40E-0212-R-2022**

40E 186513-00

40E 186516-00

40E 186519-00

OBJECTORS: USA (Dept. of Interior Bureau of Land Mgmt.);  
USA (Dept. of Interior Fish & Wildlife Service)

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**UNITED STATES' RESPONSE TO COURT ORDER**

In response to the Court's Order of October 28, 2022, which directed the United States Bureau of Land Management ("BLM" or "United States") and Fish and Wildlife Service ("United States") to file a map showing the 331.00-acre place of use proposed for Water Right Claim Nos. 40E 186513-00, 40E 186516-00, and 40E 186519-00, the United States respectfully submits the attached.

Attached as **Exhibit 1**, the United States submits a map of claims 40E 186513-00, 40E 186516-00, and 40E 186519-00, which highlights the land in Section 29, Township 22N, Range

41E, Garfield County which is administered by BLM and which the parties sought to remove from the Place of Use through the October 21, 2022 Stipulation.

Attached as **Exhibit 2**, the United States submits a map of claims 40E 186513-00, 40E 186516-00, and 40E 186519-00, which highlights 39.00 acres in the NENE and SENE quadrants and 7.00 acres in the NESE quadrants of Section 29, Township 22N, Range 41E, Garfield County, which is administered by BLM and which the parties sought to remove from the Place of Use through the October 21, 2022 Stipulation. The 46.00 acres shown on the map constitute the exact reduction.

Additionally, the Court's Order of October 28, 2022 addressed the absence of a signature on the October 21, 2022 Stipulation from Claimant Virginia L. Murnion. It is the understanding of undersigned counsel for the United States that Virginia L. Murnion is deceased, and that the signatory Claimants are Ms. Murnion's children. For this reason, there is no signatory to the October 21, 2022 Stipulation on behalf of Claimant.

Dated: December 2, 2022

Respectfully submitted,

TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

JESSE A. LASLOVICH, United States Attorney  
District of Montana

/s/ Mark J. Widerschein

MARK J. WIDERSCHIN, Trial Attorney  
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United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Electronic Service: [MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)

ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management, Fish and Wildlife Service

## CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2022, I sent a true and correct copy of the foregoing document to the following parties:

**Service via USPS Mail:**

Natali Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9606

Leo Murnion  
PO Box 307  
Jordan, MT 59337

Benedict H. Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9609

Virginia L. Murnion  
PO Box 13  
Jordan, MT 59337-0013

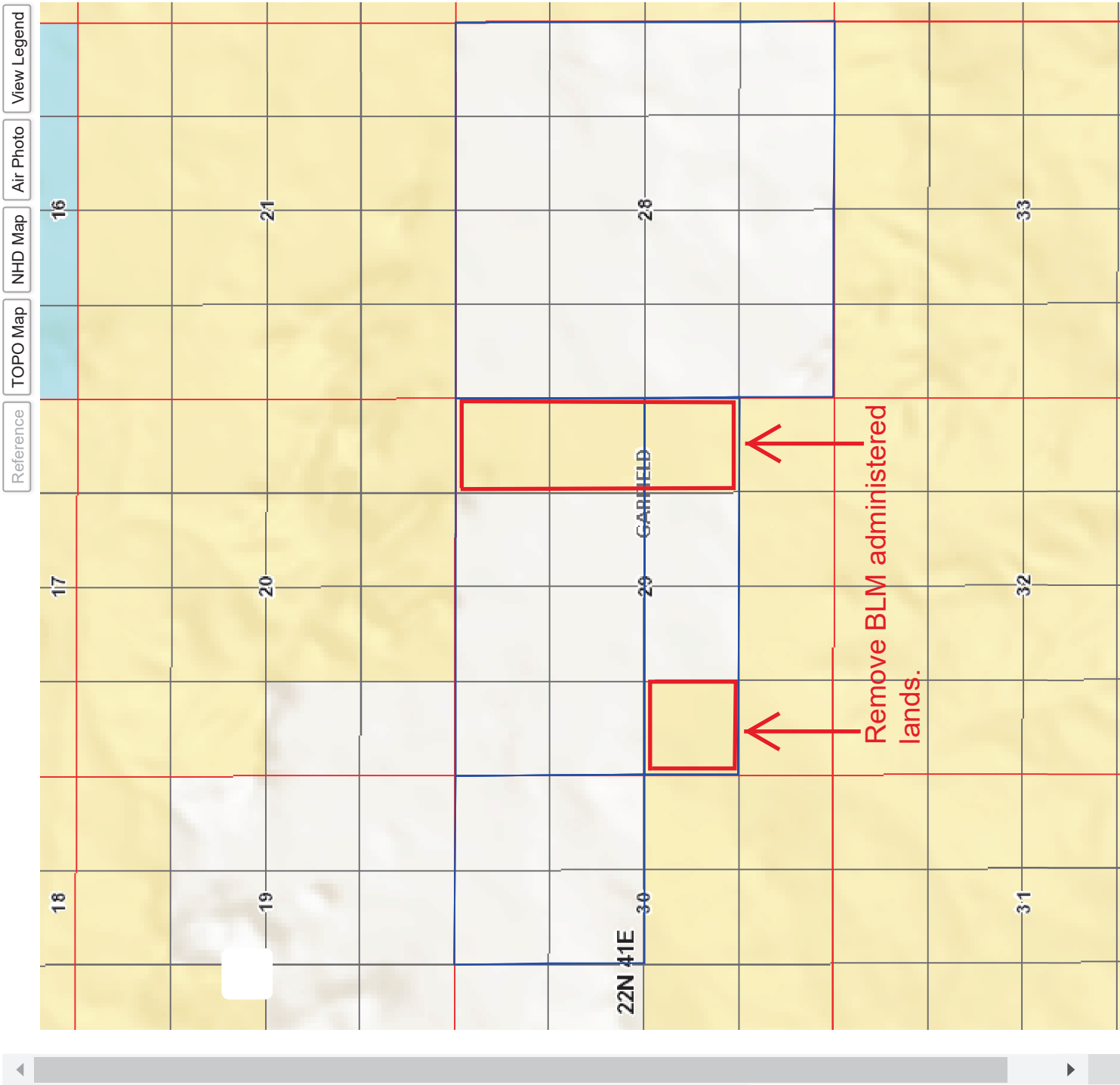
/s/ *Melissa Saale*  
Melissa Saale, Law Clerk

# **Exhibit 1**

Water Right Nos. 40E  
186513, 186516, & 186519

Legend

- ☒ Diversion Count:
- ☒ Surface water diversion.
- ☒ Ground water diversion.
- ☐ Adjacent Diversions
- ☒ Surface water diversion.
- ☒ Ground water diversion.
- ☒ Place of Use Legal Land Descriptions
- ☐ Adjacent POUs
- ☐ Cadastral ?
- ☒ PLSS Detail ?



# **Exhibit 2**

Case 40E-212  
Claim Nos. 40E 186514,  
186516, and 186519



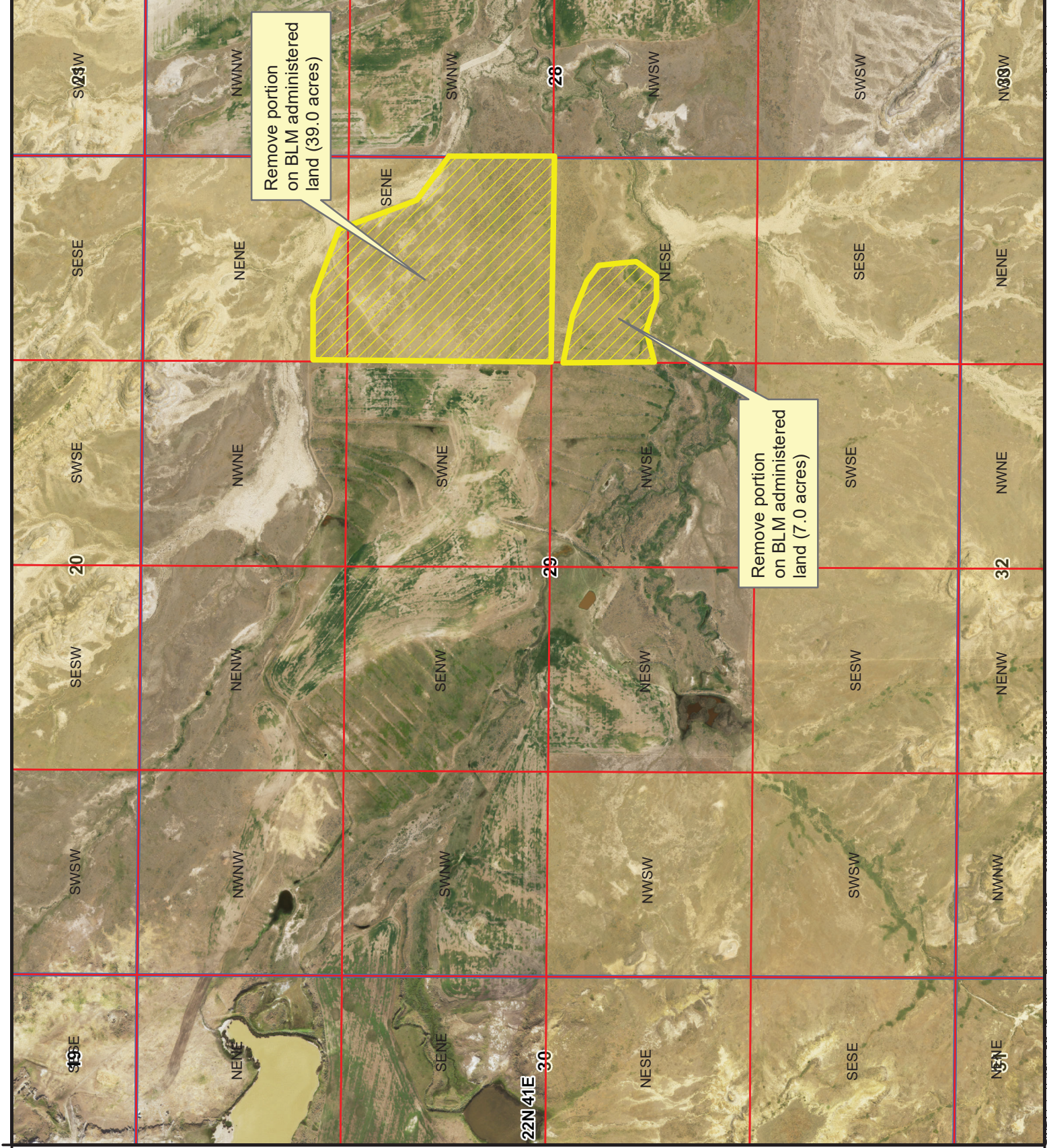
NOTE TO MAP USERS

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of the data layers shown on the map. The official land records should be checked for the current status on any specific tract of land.

Legend

BLM administered  
land

POU on BLM  
admin land  
(0.20 acre)



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ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management, Fish and Wildlife Service

ELECTRONICALLY FILED

40E-0212-R-2022

October 21, 2022

Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER  
AND FORT PECK DAM – BASIN 40E  
PRELIMINARY DECREE**

\*\*\*\*\*

CLAIMANT: Natali Murnion; Leo Murnion; Benedict H.  
Murnion; Virginia L. Murnion

OBJECTORS: USA (Dept. of Interior Bureau of Land  
Mgmt.); USA (Dept of Interior Fish &  
Wildlife Service)

**CASE 40E-0212-R-2022**

40E 186513-00

40E 186516-00

40E 186519-00

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**STIPULATION TO RESOLVE OBJECTIONS**

This Stipulation, entered into by the United States of America, Bureau of Land Management and Fish and Wildlife Service (collectively, the “United States”), and Claimants Natali Murnion, Leo Murnion, and Benedict H. Murnion (collectively, “Claimants”), is for the purpose of resolving the United States’ objections to Water Right Claim Nos. 40E 186513-00, 40E 186516-00, and 40E 186519-00 (the “Claims”).

## RECITALS

A. Pursuant to Mont. Code Ann. § 85-2-221, Claimant, or a predecessor-in-interest to Claimant, timely filed Statements of Claim for the Claims with the Department of Natural Resources and Conservation.

B. Pursuant to Mont. Code Ann. § 85-2-233, the United States timely filed Notices of Objection to the Claims as they appeared on the Preliminary Decree for Basin 40E.

C. Claim 40E 186513-00 asserts a filed right on Lone Tree Creek and an Unnamed Tributary of Lone Tree Creek for irrigation of a maximum of 383.00 acres. The legal land descriptions for the place of use are incorrect.

D. Claim 40E 186516-00 asserts a filed right on Unnamed Tributary of Lone Tree Creek for irrigation of a maximum of 383.00 acres. The legal land descriptions for the place of use are incorrect.

E. Claim 40E 186519-00 asserts a filed right on Lone Tree Creek for irrigation of a maximum of 383.00 acres at a volume of 960.00 AF. The volume and legal land descriptions for the place of use are incorrect.

F. In the interest of resolving this case without the need for further litigation, Claimant and the United States stipulate to the modifications below.

## STIPULATION

1. Claim No. 40E 186513-00
  - a. The maximum acres for claim 40E 186513-00 should be amended to **337.00**.
  - b. The place of use for claim 40E 186513-00 should be amended to the following:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	67.00		NE	30	22N	41E	GARFIELD
2	119.00		NW	29	22N	41E	GARFIELD
3	45.00		W2NE	29	22N	41E	GARFIELD
4	27.00		NESW	29	22N	41E	GARFIELD
5	28.00		NWSE	29	22N	41E	GARFIELD
6	51.00			28	22N	41E	GARFIELD
Total:	<u>337.00</u>						

2. Claim No. 40E 186516-00

- a. The maximum acres for claim 40E 186516-00 should be amended to **337.00**.
- b. The place of use for claim 40E 186516-00 should be amended to the following:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	67.00		NE	30	22N	41E	GARFIELD
2	119.00		NW	29	22N	41E	GARFIELD
3	45.00		W2NE	29	22N	41E	GARFIELD
4	27.00		NESW	29	22N	41E	GARFIELD
5	28.00		NWSE	29	22N	41E	GARFIELD
6	51.00			28	22N	41E	GARFIELD
Total:	<u>337.00</u>						

3. Claim No. 40E 186519-00

- a. The maximum acres for claim 40E 186519-00 should be amended to **337.00**.
- b. The volume for claim 40E 186519-00 should be amended to **775.1 AF** in proportion with the acreage reduction.
- c. The place of use for claim 40E 186519-00 should be amended to the following:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	67.00		NE	30	22N	41E	GARFIELD
2	119.00		NW	29	22N	41E	GARFIELD
3	45.00		W2NE	29	22N	41E	GARFIELD
4	27.00		NESW	29	22N	41E	GARFIELD
5	28.00		NWSE	29	22N	41E	GARFIELD
6	51.00			28	22N	41E	GARFIELD
Total:	337.00						

4. Upon entry of a ruling and final order in this case reflecting the amendments specified above for the Claims, the United States' objections to the Claims shall be deemed resolved, provided that such order(s) do not expand or change other substantive elements of the claim.

5. This Stipulation is the compromise of disputed water claims and is not to be construed as an admission against the interests of any party.

6. The terms of this Stipulation are binding on the parties, their successors, and assignees. Nothing in this Stipulation shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Stipulation.

7. Each party will bear its own costs and attorney fees arising from the negotiation and execution of the Stipulation and in proceedings before the Montana Water Court regarding this case.

8. Each undersigned party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence, whatsoever.

9. The parties hereto represent and affirm that the signatories to this Stipulation are legally authorized to bind the party to this matter.

10. This Stipulation may be executed by the parties in counterparts, each of which when executed and filed with the Montana Water Court shall be an original, but all of which together shall constitute one instrument.

11. This document (¶¶ 1-11) embodies the entire Stipulation of the parties.

IT IS SO STIPULATED on the date last entered below:

TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

JESSE LASLOVICH, United States Attorney  
District of Montana

Dated: October 21, 2022

Mark J. Widerschein

MARK J. WIDERSCHIN, Trial Attorney  
[mark.widerschein@usdoj.gov](mailto:mark.widerschein@usdoj.gov) | (202) 532-5803  
United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Electronic Service: [MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)

ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management, Fish and Wildlife Service

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Natali Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9606

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Leo Murnion  
PO Box 307  
Jordan, MT 59337

10. This Stipulation may be executed by the parties in counterparts, each of which when executed and filed with the Montana Water Court shall be an original, but all of which together shall constitute one instrument.

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TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

JESSE LASLOVICH, United States Attorney  
District of Montana

Dated: \_\_\_\_\_, 2022

MARK J. WIDERSCHIEIN, Trial Attorney  
[mark.widerschein@usdoj.gov](mailto:mark.widerschein@usdoj.gov) | (202) 532-5803  
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ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management, Fish and Wildlife Service

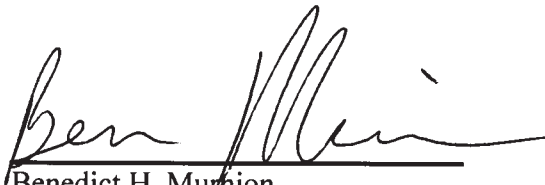
Dated: Oct. 3, 2022

Natali Murnion  
Natali Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9606

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Leo Murnion  
PO Box 307  
Jordan, MT 59337

Dated: 10-3, 2022

  
Benedict H. Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9609

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11. This document (§§ 1-11) embodies the entire Stipulation of the parties.

IT IS SO STIPULATED on the date last entered below:

TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

JESSE LASLOVICH, United States Attorney  
District of Montana

Dated: \_\_\_\_\_, 2022

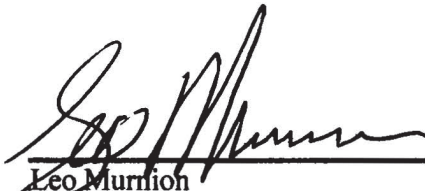
\_\_\_\_\_  
MARK J. WIDERSCHIEIN, Trial Attorney  
[mark.widerschein@usdoj.gov](mailto:mark.widerschein@usdoj.gov) | (202) 532-5803  
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Electronic Service: [MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)

ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management, Fish and Wildlife Service

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Natali Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9606

Dated: July 4, 2022

  
\_\_\_\_\_  
Leo Murnion  
PO Box 307  
Jordan, MT 59337

Dated: \_\_\_\_\_, 2022

---

Benedict H. Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9609

## CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2022, I sent a true and correct copy of the foregoing document to the following parties:

### Service via USPS Mail:

Natali Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9606

Leo Murnion  
PO Box 307  
Jordan, MT 59337

Benedict H. Murnion  
772 Valley View Rd.  
Brusett, MT 59318-9609

Virginia L. Murnion  
PO Box 13  
Jordan, MT 59337-0013

/s/ *Melissa Saale*  
Melissa Saale, Law Clerk